

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

No. 1:21-cv-01448-DAD-BAM (PC)

Plaintiff,

v.

BARAONA, et al.,

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

Defendant.

(Doc. No. 13)

Plaintiff Durrell Anthony Puckett is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 28, 2022, the assigned magistrate judge screened plaintiff's first amended complaint ("FAC") and found that he had stated the following cognizable claims: (1) a claim of use of excessive force in violation of the Eighth Amendment of the U.S. Constitution against defendants Sergeant Baraona, Correctional Officer Burneszki, Correctional Officer Leos, Correctional Officer Hernandez, Correctional Officer Diaz, and Doe 1 Defendant; (2) a claim of sexual assault in violation of the Eighth Amendment against defendant Correctional Officer Leos; and (3) a claim of failure to protect in violation of the Eighth Amendment against defendants Correctional Officer A. Ruiz, Dr. Martinez, Correctional Officer E. Ruiz, Correctional Officer Meiers, Correctional Officer Gutierrez, Correctional Officer A. Cruz, Psych. Tech. K. Cronister,

1 and Jane Doe Nurse. (Doc. No. 13.) The magistrate judge also found that plaintiff had failed to
2 state any other cognizable claim against those defendants and failed to state any cognizable claim
3 against the defendant Roberts. (*Id.* at 8–9.)

4 Rather than provide plaintiff an opportunity to file a further amended complaint, the
5 magistrate judge issued findings and recommendations recommending that this case proceed only
6 the claims found to be cognizable and that all other claims brought by plaintiff be dismissed
7 without further leave to amend. (*Id.* at 10.) In so recommending, the magistrate judge noted that
8 “[d]espite being provided with the relevant pleading and legal standards, Plaintiff has been unable
9 to cure the remaining deficiencies and further leave to amend is not warranted.” (*Id.* at 9.)

10 The pending findings and recommendations were served on plaintiff and contained notice
11 that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 10.)
12 No objections have been filed, and the time in which to do so has now passed.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
14 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
15 findings and recommendations are supported by the record and proper analysis.

16 Accordingly,

- 17 1. The findings and recommendations issued on January 28, 2022 (Doc. No. 13) are
18 adopted in full;
- 19 2. This action shall proceed on plaintiffs first amended complaint with his (1) claim
20 of use of excessive force in violation of the Eighth Amendment of the U.S.
21 Constitution against defendants Sergeant Baraona, Correctional Officer Burneszki,
22 Correctional Officer Leos, Correctional Officer Hernandez, Correctional Officer
23 Diaz, and Doe 1 Defendant; (2) claim of sexual assault in violation of the Eighth
24 Amendment against defendant Correctional Officer Leos; and (3) claim of failure
25 to protect in violation of the Eighth Amendment against defendants Correctional
26 Officer A. Ruiz, Dr. Martinez, Correctional Officer E. Ruiz, Correctional Officer
27 Meiers, Correctional Officer Gutierrez, Correctional Officer A. Cruz, Psych. Tech.
28 K. Cronister, and Jane Doe Nurse;

3. All other claims and named defendants are dismissed from this action due to plaintiff's failure to state a cognizable claim;
 4. This action is referred back to the assigned magistrate judge for further proceedings consistent with this order; and
 5. The Clerk of the Court is directed to update the docket to reflect that plaintiff includes the following defendants in the operative first amended complaint:
 - a. Sergeant Baraona
 - b. Correctional Officer Burneszki
 - c. Correctional Officer Leos
 - d. Correctional Officer Hernandez
 - e. Correctional Officer Diaz,
 - f. Correctional Officer A. Ruiz
 - g. Dr. Martinez
 - h. Correctional Officer E. Ruiz
 - i. Correctional Officer Meiers
 - j. Correctional Officer Gutierrez
 - k. Correctional Officer A. Cruz
 - l. Psych. Tech. K. Cronister
 - m. Jane Doe Nurse
 - n. Doe 1

IT IS SO ORDERED.

Dated: **March 16, 2022**

Dale A. Troyd